

RICHARD C. EYMAN  
Eymann Allison Hunter Jones, P.S.  
2208 West Second Avenue  
Spokane, WA 99201-5417  
(509) 747-0101

STEPHEN L. NORDSTROM  
Nordstrom & Nees, P.S.  
323 South Pines Road  
Spokane, WA 99206  
(509) 924-9800

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF WASHINGTON

THOMAS A. WAITE.

**Plaintiff.**

VS.

THE CHURCH OF JESUS CHRIST OF  
LATTER DAY SAINTS d/b/a  
CORPORATION OF THE PRESIDING  
BISHOP OF THE CHURCH OF JESUS  
CHRIST OF LATTER DAY SAINTS, a  
Utah corporation, d/b/a  
CORPORATION OF THE PRESIDENT  
OF THE CHURCH OF JESUS CHRIST  
OF LATTER DAY SAINTS, a Utah  
corporation; DONALD C. FOSSUM;  
and STEVEN D. BRODHEAD,

No. CV-05-399-EFS

**PLAINTIFF'S SPECIFIC FACTS  
RELIED UPON IN SUPPORT OF  
PLAINTIFF'S MOTION FOR  
PARTIAL SUMMARY  
JUDGMENT RE: AFFIRMATIVE  
DEFENSES (LR 56.1(a))**

#### Defendants.

The following specific facts are relied upon by plaintiff Thomas A. Waite in support of plaintiff's Motion for Partial Summary Judgment Re: Affirmative Defenses. The pertinent facts are as follows:

1. Plaintiff was a missionary for the Church of Jesus Christ of Latter Day  
Saints. Attachment A (Thomas A. Waite deposition, p. 39, ln. 14-25; p. 40, ln.  
1-16.)

**PLAINTIFF'S SPECIFIC FACTS RELIED UPON IN SUPPORT OF PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT RE: AFFIRMATIVE DEFENSES (LR 56.1(a))- 1**  
(specific facts in sup of plaintiff psj mot re affirmative defenses.wpd)

# EYmann Allison Hunter Jones P.S.

2208 WEST SECOND AVENUE • SPOKANE, WA 99201-5417  
TELEPHONE: (509) 747-0101 • FAX: (509) 458-5977

2. Missionaries were required to sign a “Driving Contract.” Attachment B (Donald C. Fossum deposition, p. 43, ln. 24-25; p. 44, ln. 1-25; p. 45, ln. 1-2; Fossum deposition, Exhibit 1).

3. Plaintiff signed a “Driving Contract.” Attachment C (Waite deposition, p. 98, ln. 8-25; Exhibit 3).

4. The “Driving Contract” required that missionaries wear seatbelts whenever riding in a vehicle. Attachment B (Fossum deposition, Exhibit 1).

5. At the time of the motor vehicle collision plaintiff was riding without a seatbelt in the bed of a church-owned pickup. Attachment D (Declaration of James T. Ross, p. 1, ln. 27-32; p. 2, ln. 1-22); and Attachment E (Mark Tyler Ryan deposition, p. 12, ln. 4-25; p. 13, ln. 1).

DATED this 30th day of January, 2007.

# EYmann Allison Hunter Jones, P.S.

By: s/Richard C. Eymann  
RICHARD C. EYMAN, WSBA #7470  
Co-Counsel for Plaintiff

## NORDSTROM & NEES, P.S.

By: *Telephonically Approved 1/30/07*  
STEPHEN L. NORDSTROM, WSBA #11267  
Co-Counsel for Plaintiff

**PLAINTIFF'S SPECIFIC FACTS RELIED UPON IN SUPPORT OF PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT RE: AFFIRMATIVE DEFENSES (LR 56.1(a))- 2**

## EYMAN ALLISON HUNTER JONES P.S.

2208 WEST SECOND AVENUE • SPOKANE, WA 99201-5417  
TELEPHONE: (509) 747-0101 • FAX: (509) 458-5977

**CERTIFICATE OF SERVICE**

I, RICHARD C. EYmann, hereby certify that on the 30th day of January, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following participants:

Brian T. Rekofke  
Witherspoon Kelley Davenport & Toole  
1100 U.S. Bank Building  
422 W. Riverside Avenue  
Spokane, WA 99201

Andrew C. Smythe  
Paine Hamblen Coffin Brooke & Miller  
717 W. Sprague Avenue, Suite 1200  
Spokane, WA 99201

s/Richard C. Eymann  
**RICHARD C. EYMAN**

## Attachment A

Page 1

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF WASHINGTON

4

THOMAS A. WAITE,

6 Plaintiff,

7 vs. No. CV-05-399-EFS

8 THE CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS d/b/a/  
9 CORPORATION OF THE PRESIDING BISHOP OF THE CHURCE OF  
10 JESUS CHRIST OF LATTER DAY SAINTS, a Utah corporation,  
11 d/b/a/ CORPORATION OF THE PRESIDENT OF THE CHURCH OF  
12 JESUS CHRIST OF LATTER DAY SAINTS, a Utah corporation,  
13 et al.,

14 Defendants.

15

17 DEPOSITION OF THOMAS A. WALTER

18 Taken on Behalf of the Defendants

19 Tuesday, October 17, 2006

20 DEPOSITION OF THOMAS A. WAITE, taken on behalf of  
21 the Defendants, at 1500 South Raymond Avenue, Fullerton,  
22 California, commencing at 9:18 A.M. on Tuesday, October  
23 17, 2006, before PATRICIA L. HUBBARD, CSR #3400, a  
24 Certified Shorthand Reporter in and for the State of  
25 California, pursuant to Notice.

<p style="text-align: center;">Page 37</p> <p>1 did you go to school every day or were you -- or 2 did you have home studies? Or do you recall how 3 that worked?</p> <p>4 A. I don't recall how that worked.</p> <p>5 Q. Well, let me ask you this. Did you 6 always, when you were -- aside from the La Sierra 7 High School experience, is it your recollection 8 that while you attended Fullerton you'd get up 9 and physically go to -- to Fullerton High School 10 every day and attend classes?</p> <p>11 A. I think there was a brief period 12 where before going to La Sierra we tried to do 13 home schooling.</p> <p>14 Q. Okay. And do you recall when that 15 was?</p> <p>16 A. I can't say for certain --</p> <p>17 Q. Was it --</p> <p>18 A. -- when that was.</p> <p>19 Q. Okay. Was it through -- was it -- 20 was it home schooling through Fullerton or in 21 conjunction with Fullerton, or was it home 22 schooling just done independently of Fullerton?</p> <p>23 A. My mom and dad set that up. I wasn't 24 really aware of how it all worked.</p> <p>25 Q. Okay. And how did this -- were your</p>	<p style="text-align: center;">Page 39</p> <p>1 your birthday is August 16th. 2 Do you remember your birthday, for 3 instance?</p> <p>4 A. No.</p> <p>5 MR. NORDSTROM: What was the date you 6 mentioned? I missed that.</p> <p>7 MR. REKOFKE: 20 -- August 21 was the 8 day of the accident.</p> <p>9 Q. And then your birthday was five days 10 before that?</p> <p>11 A. Yeah. I don't remember that at all.</p> <p>12 Q. Okay. Do you have any 13 recollection --</p> <p>14 Well, when did you start your -- your 15 mission in Spokane the first go-around?</p> <p>16 When did you arrive in Spokane as a 17 new missionary?</p> <p>18 A. I can't remember the specific date.</p> <p>19 I reported to the missionary training center in 20 Utah December --</p> <p>21 Q. December of 2002?</p> <p>22 A. Yeah. I guess so.</p> <p>23 Q. Okay. And then after a few weeks at 24 the missionary training center, then you went 25 from the training center --</p>
<p style="text-align: center;">Page 38</p> <p>1 parents teaching you at home or was -- how was 2 that program set up when you didn't actually 3 physically attend at Fullerton High School but 4 were undergoing the education process at home?</p> <p>5 A. I can't remember for certain how that 6 was conducted.</p> <p>7 Q. When all was said and done, how were 8 your high school grades? Do you recall?</p> <p>9 A. They were pretty good.</p> <p>10 Q. Okay. I think you were like me.</p> <p>11 You didn't exactly excel in math?</p> <p>12 A. Yeah.</p> <p>13 Q. Okay. Let me ask you a little bit 14 about the accident that occurred in August of 15 2003 in Spokane which brings us here today.</p> <p>16 I'm certainly not trying to dredge up 17 any bad memories, but that's part of my -- my job 18 here.</p> <p>19 First of all, do you have any 20 recollection of the accident?</p> <p>21 A. I have no recollection of what took 22 place on the date of the accident.</p> <p>23 Q. Okay. What's the last memory you 24 have before the accident?</p> <p>25 The accident's August 21. I know</p>	<p style="text-align: center;">Page 40</p> <p>1 A. Right.</p> <p>2 Q. -- to Spokane?</p> <p>3 A. Right, yes.</p> <p>4 Q. So were you in place --</p> <p>5 MR. NORDSTROM: Make sure he finishes 6 his question before you answer. All right?</p> <p>7 BY MR. REKOFKE:</p> <p>8 Q. So you were in Spokane either 9 December of '02 or January of 2003 to start your 10 mission?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. Do you have recollection of -- 13 of being in place as a -- as a new missionary in 14 Spokane in January of 2003?</p> <p>15 Do you recall events that occurred?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. Why don't you tell me a little 18 bit about just what you -- what you recall about 19 the early experiences as a -- as a new missionary 20 in Spokane, what did you do, those types of 21 things.</p> <p>22 A. My first area was Troy, Idaho. And 23 that's where I was trained.</p> <p>24 Q. Do you recall about how long you were 25 in Troy?</p>

6 (Pages 37 to 40)

**Naegeli**  
**REPORTING**  
**CORPORATION**

**800.528.3335**  
**www.NaegeliReporting.com**

**503.227.7123 FAX**

Portland, OR  
503.227.1544

Seattle, WA  
206.622.3376

Spokane, WA  
509.838.6000

Coeur d'Alene, ID  
208.667.1163

## Attachment B

## CONDENSED TRANSCRIPT

UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF WASHINGTON

THOMAS A. WAITE, : No. CF-05-399-EFS  
Plaintiff, : Videotaped Deposition of:  
vs. : DONALD C. FOSSUM  
THE CHURCH OF JESUS CHRIST :  
OF LATTER-DAY SAINTS dba :  
CORPORATION OF THE PRESIDING :  
BISHOP OF THE CHURCH OF :  
JESUS CHRIST OF LATTER-DAY :  
SAINTS, a Utah corporation, :  
dba CORPORATION OF THE :  
PRESIDENT OF THE CHURCH OF :  
JESUS CHRIST OF LATTER-DAY :  
SAINTS, a Utah corporation; :  
DONALD C. FOSSUM; and STEVEN :  
D. BRODHEAD, :  
Defendants.



November 9, 2006 - 1:08 p.m.

Location: Kirton & McConkie  
1800 Eagle Gate Tower  
60 East South Temple  
Salt Lake City, Utah 84111

Reporter: Teri Hansen Cronenwett  
Certified Realtime Reporter, Registered Merit Reporter  
Notary Public in and for the State of Utah



GARCIA & LOVE  
COURT REPORTING AND VIDEOGRAPHY

36 South State Street • Suite 1220 • Salt Lake City, UT 84111 • 801.538.2333 • Fax 801.538.2334

Case 2:05-cv-00399-EFS Document 52 Filed 01/30/2007  
November 9, 2006

DONALD C. FOSSUM

1      A. That's correct.  
 2      Q. How often before this time?  
 3      A. I don't know. I didn't keep track.  
 4      Q. All right. Every time you had a district meeting?  
 5      A. Not every time. It all depended on their schedule  
 6      and what they wanted to do and everything.  
 7      Q. All right. But you had -- had you ever carried  
 8      more than six in a pickup before?  
 9      A. I believe so, yes.  
 10     Q. All right. And would the number more than six or  
 11     more than four all be in the bed of the pickup?  
 12     A. It just depended on size.  
 13     Q. Well, did you put anybody more than four in the cab  
 14     of the pickup?  
 15     A. We have, but those were three smaller gentlemen.  
 16     Q. Okay. But this is the pickup you are driving now  
 17     in Spokane, correct?  
 18     A. That's correct.  
 19     Q. And how many seatbelts are in the front of the  
 20     Dakota that you were driving?  
 21     A. I don't know.  
 22     Q. Did it have bucket seats or a bench seat?  
 23     A. It's a good question.  
 24     Q. And again, I'm talking about your driver's seat and  
 25     the passenger seat. Were those bucket seats, or was that a

1      to the president, and it was basically, you know, if we get  
 2      caught, we're going to get in trouble. But that was about  
 3      it.  
 4      Q. And was that before August of 2003?  
 5      A. I believe so.  
 6      Q. Was -- could it have been after 2003? I mean,  
 7      after August of 2003?  
 8      A. I believe it was before the accident.  
 9      Q. Okay. Do you know that as you sit here?  
 10     A. Do I know it? No. That's why I said I believe.  
 11     Q. Okay. What's the basis for that belief?  
 12     A. Because it wouldn't make sense for them to tell me  
 13     after because the pickup was nonexistent after that.  
 14     Q. Okay. So you may have had an assistant to the  
 15     president sometime tell you specifically you could get in  
 16     trouble by carrying somebody in the bed of the pickup?  
 17     A. That's correct.  
 18     Q. Okay. Did you pass that information on to any one  
 19     of the elders who rode in the bed the pickup?  
 20     A. We all knew it, sir.  
 21     Q. Can you tell me, so did -- strike this. Was  
 22     anybody present with you when the assistants told you that?  
 23     A. I don't remember.  
 24     Q. Well, can you tell me how you knew that everybody  
 25     knew that they weren't to ride in the bed of the pickup?

41

43

1      bench seat?  
 2      A. I don't recall.  
 3      Q. Okay. Was it a stick or automatic?  
 4      A. Automatic.  
 5      Q. All right. The back seat, do you know whether it  
 6      had more than two seatbelts available?  
 7      A. I don't know. I never got back there.  
 8      Q. As the designated driver, what were your  
 9      responsibility -- any -- did you have any responsibility  
 10     regarding seatbelts?  
 11     A. I had the responsibility to wear my own and also to  
 12     encourage others to wear theirs, but as 18, 19, 20-year-old  
 13     men, I figured that we could all be responsible for our own  
 14     actions.  
 15     Q. And that's the way you felt when you were back in  
 16     June, July and August of 2003?  
 17     A. They were adults, correct?  
 18     Q. Well, I guess I am asking you the question, though.  
 19     Is that the way you felt back then?  
 20     A. Yes, sir. They were adults. They had  
 21     responsibility over themselves, and they could make their  
 22     decision whether they wanted to wear it or not.  
 23     Q. Had anybody, anyone in the mission field, advised  
 24     you not to carry missionaries in the bed of a pickup?  
 25     A. It was mentioned once in passing from an assistant

1      A. Because we all signed a document that said we would  
 2      wear our seatbelts.  
 3      Q. And that's why they knew they weren't supposed to  
 4      be in the bed. Is that what you're telling me?  
 5      A. That's what I would assume.  
 6      Q. Okay. So you're telling me this was an assumption  
 7      on your part that everybody else knew. Is that correct?  
 8      A. They all signed a document, so I feel it's a pretty  
 9      safe assumption, sir.  
 10     Q. I understand, but that's what you -- but you're  
 11     saying you assumed that they knew, correct?  
 12     A. Well, I guess they did know because they signed the  
 13     document. So no, I am not saying they -- I am assuming. I  
 14     guess I am saying I know.  
 15     Q. Okay. So you know that they signed a document?  
 16     A. That's correct.  
 17     Q. Did that document indicate they would not ride in a  
 18     bed of a pickup?  
 19     A. No. It said they would wear their seatbelt at all  
 20     times when in a vehicle.  
 21     Q. All right. Let me show you what's going to be  
 22     marked as Exhibit 1.  
 23     (Deposition Exhibit No. 1 was marked.)  
 24     Q. (By Mr. Nordstrom) Do you recognize this document?  
 25     A. Yes, sir.

42

44

Case 2:05-cv-00399-EFS Document 52 Filed 04/30/2007

DONALD C. FOSSUM

1 Q. Okay. What's it called?  
 2 **A. Driving contract.**  
 3 Q. Would you read the first sentence for me, please.  
 4 **A. "In exchange for the privilege of being allowed to**  
 5 **drive or ride in a mission-owned car while serving in the**  
 6 **Washington Spokane mission."**  
 7 Q. Okay. Then it says, I, and do you remember  
 8 printing your name there?  
 9 **A. Yes, sir.**  
 10 Q. Okay. And at the very beginning it says  
 11 mission-owned car. Is that correct?  
 12 **A. That's correct.**  
 13 Q. All right. At any place does it say pickup?  
 14 **A. Nope, it doesn't.**  
 15 Q. Okay. Then it changes, and under -- where -- and  
 16 show me where it says that you wear a seatbelt.  
 17 **A. That would be B.**  
 18 Q. Would you read that one, please.  
 19 **A. "Wear a seatbelt at all times while the vehicle is**  
 20 **moving."**  
 21 Q. Okay. So the contract heads out starting a car,  
 22 correct, and then we have wear a seatbelt, right, the vehicle  
 23 is moving, correct?  
 24 **A. Yes, sir, but also I do believe that most people**  
 25 **would consider a pickup a car because we don't very often**

1 Missionaries should.  
 2 **A. I believe it might have been talked about in a zone**  
 3 **meeting.**  
 4 Q. Okay. Does it refer any place on that document  
 5 that you have looked over to pickups?  
 6 **A. It says driving other vehicles, so vehicle would**  
 7 **assume a pickup. Again, vehicle. Again, it refers to**  
 8 **vehicle down underneath both missionaries share the**  
 9 **responsibility and, again, it says, stand outside the**  
 10 **vehicle.**  
 11 Q. I understand. If you could just look. Do you see  
 12 any place that refers to pickups?  
 13 **A. Well --**  
 14 MR. REKOFKE: He's answering the question, so go  
 15 ahead and answer.  
 16 **A. That's -- I mean, a pickup is a vehicle, so**  
 17 **therefore, yes, it does refer to a pickup as well as a car.**  
 18 Q. (By Mr. Nordstrom) Does that have that language in  
 19 there that you have just referred to? Doesn't it say on the  
 20 document -- and I just want to make sure I'm clear. It says,  
 21 "Always wear seatbelts and never have more people in the car  
 22 than there are seatbelts." Does it mention pickup anywhere?  
 23 MR. REKOFKE: In that sentence?  
 24 Q. (By Mr. Nordstrom) In any sentence on that  
 25 document, does it mention pickup anywhere?

45

47

1 **make that distinction.**  
 2 Q. I will move to strike, nonresponsive on that. Let  
 3 me just make sure I understand, though. Have you ever had  
 4 any specific conversation with any other missionary on  
 5 what -- how they interpreted this document?  
 6 **A. No, sir.**  
 7 Q. And so everything you are talking about is an  
 8 assumption on your part regarding other missionaries riding  
 9 in that pickup, correct?  
 10 **A. That's correct.**  
 11 VIDEOGRAPHER: Ten minutes, Counsel.  
 12 Q. (By Mr. Nordstrom) Show you what's marked -- would  
 13 you mark that as two?  
 14 (Deposition Exhibit No. 2 was marked.)  
 15 Q. (By Mr. Nordstrom) Showing you what's been marked  
 16 as Exhibit 2, do you ever recall seeing that document?  
 17 **A. What was the question again?**  
 18 Q. Do you recall ever seeing this document before?  
 19 **A. No, I don't.**  
 20 Q. It indicates in this document, "Missionaries should  
 21 always wear seatbelts and never have more people in the car  
 22 than there are seatbelts for." As a designated driver, were  
 23 you ever given that instruction?  
 24 **A. Where is that?**  
 25 Q. It's about midway in the document. It says:

1 MR. REKOFKE: Objection, asked and answered, but go  
 2 ahead and answer it again.  
 3 **A. Again, vehicle is assuming anything that moves with**  
 4 **four wheels.**  
 5 Q. (By Mr. Nordstrom) Just a minute. I'll move to  
 6 strike as nonresponsive. My question again is, can you see  
 7 the word pickup listed anywhere on that document, Elder  
 8 Ross -- I mean, Elder Fossum?  
 9 MR. REKOFKE: Objection. I think if you want to  
 10 ask him what he understands the document, he is telling you  
 11 that. If you want him to ask, does the word pickup say that?  
 12 I think those are two different questions. That's my  
 13 objection.  
 14 Q. (By Mr. Nordstrom) Yeah. Well, I think I asked the  
 15 question, do you see the word pickup referenced any place on  
 16 this document?  
 17 **A. Those specific words, no.**  
 18 Q. Okay. Thank you.  
 19 VIDEOGRAPHER: Five minutes, Counsel.  
 20 Q. (By Mr. Nordstrom) I just want to go over the  
 21 first paragraph again. It says driving other vehicles. Have  
 22 you got it there?  
 23 **A. Yep.**  
 24 Q. Second paragraph, you can only drive vehicles  
 25 assigned to him. Is that the missionaries, correct?

46

48

## DRIVING CONTRACT

In exchange for the privilege of being allowed to drive or ride in a mission-owned car while serving in the Washington Spokane Mission,  
I,

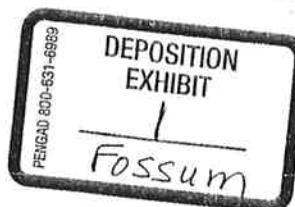
agree to: (PRINT NAME HERE)

- a. Obey all mission vehicle rules.
- b. Wear a seat belt at all times while the vehicle is moving.
- c. Submit all reports on time.
- d. Not tamper with odometers.
- e. Use defensive driving principles.
- f. Obey all local traffic laws.
- g. Drive mission vehicles only.
- h. Not transport unauthorized people in the vehicle.
- i. Only use the vehicle for approved mission business within my assigned area.

Signed:

Date:

WASHINGTON SPOKANE MISSION



1 JANUARY 2000

## **Attachment C**

Thomas A. Waite

October 17, 2006

Page 1

17 DEPOSITION OF THOMAS A. WAITE  
18 Taken on Behalf of the Defendants  
19 Tuesday, October 17, 2006  
20 DEPOSITION OF THOMAS A. WAITE, taken on behalf of  
21 the Defendants, at 1500 South Raymond Avenue, Fullerton,  
22 California, commencing at 9:18 A.M. on Tuesday, October  
23 17, 2006, before PATRICIA L. HUBBARD, CSR #3400, a  
24 Certified Shorthand Reporter in and for the State of  
25 California, pursuant to Notice.

Page 97	Page 99
<p>1       A. In the sense that it had little      2 pockets I could put things in, that's -- and it      3 held my name tag in place. I don't know how to      4 explain --</p> <p>5       Q. I'm just talking about the little      6 book.</p> <p>7       A. Right. Well, me, too. Just -- this      8 is how I found it helpful, like carrying around      9 with me.</p> <p>10      Q. Yeah.</p> <p>11      A. You could put your name tag -- if you      12 only have your name tag on your shirt pocket,      13 it's kind of flimsy, it could come out easy. If      14 you attach it with both the book and the pocket,      15 it's hard to come out.</p> <p>16      Q. So it was useful in several ways?</p> <p>17      A. Yeah.</p> <p>18      Q. It had some information in it and it      19 held your name tag on better?</p> <p>20      A. Yeah.</p> <p>21      Q. Okay. Is there a section, to your      22 recollection, in the missionary handbook about      23 car safety?</p> <p>24      A. I guess so.</p> <p>25      Q. Okay. I'm just asking if you recall.</p>	<p>1       Q. Okay. And what -- under that      2 contract, why don't you go ahead and read into      3 the record what -- what you agreed to do.</p> <p>4       A. Okay.</p> <p>5       Q. It says, "I Thomas Waite agreed to,"      6 and then go ahead and read those?</p> <p>7       A. "Obey all mission vehicle rules; wear      8 a seatbelt at all times while the vehicle is      9 moving; submit all reports on time; not tamper      10 with odometers; use defensive driving principles;      11 obey all local traffic laws; drive mission      12 vehicles only; not transport unauthorized people      13 in the vehicle; only use the vehicle for approved      14 mission business within my assigned area."</p> <p>15      Q. Okay. So, do you have a recollection      16 of -- of reading this and signing this on      17 January 8th?</p> <p>18      A. No.</p> <p>19      Q. Okay. You understood the rules that      20 are -- that are set forth there, though?</p> <p>21      A. I understood the rules?</p> <p>22      Q. Yeah. You under --</p> <p>23      A. I understand them.</p> <p>24      Q. Okay. You understand them now,      25 obviously?</p>
Page 98	Page 100
<p>1       A. Well, I know we read it, but it was      2 just kind of a routine thing.</p> <p>3       Q. Okay. And that's right. If you      4 don't have any specific recollection of that,      5 then that's a fine -- that's a fine answer.</p> <p>6       It says what it says. So I'm not --      7 I'm just curious if you had any recollection.</p> <p>8       Okay. Let me hand you Exhibit 3.      9 (Whereupon the document referred      10 to was marked Defendants'      11 Exhibit-3 by the Certified      12 Shorthand Reporter and is attached      13 hereto.)</p> <p>14 BY MR. REKOFKE:</p> <p>15      Q. And again to move this along, that      16 across the top it says "Driving Contract."</p> <p>17      A. Uh-huh, yes.</p> <p>18      Q. Okay. And is that your name printed      19 in there after the first paragraph?</p> <p>20      A. Correct.</p> <p>21      Q. And is that your signature at the      22 bottom of that?</p> <p>23      A. Affirmative.</p> <p>24      Q. And it's dated January 8th of 2003?</p> <p>25      A. Yes.</p>	<p>1       A. Right.</p> <p>2       Q. You understood them then?</p> <p>3       A. I'm sure I read them, but given my      4 current situation and then myself at that time,      5 obviously not to the same degree of appreciation      6 or --</p> <p>7       Q. Okay. Do you think it's reasonable      8 to have you agree to wear a seat belt at all      9 times while the vehicle was moving?</p> <p>10      A. Yes.</p> <p>11      Q. And obviously if you're in the back      12 of a truck that's moving, in the bed of the truck      13 there's no seat belt?</p> <p>14      A. Correct.</p> <p>15      Q. Okay. You -- in the first go-around      16 in the Spokane mission you were paired with Elder      17 Ross; is that right?</p> <p>18      A. Yes.</p> <p>19      Q. Okay.</p> <p>20      A. Or -- in the Spokane mission?</p> <p>21      Q. The Spokane mission, yes.</p> <p>22      A. Oh, in my first area with my trainer?</p> <p>23      Q. Yeah. Let me walk through it?</p> <p>24      A. Okay.</p> <p>25      Q. Who -- let's do it this way. I'll</p>

21 (Pages 97 to 100)

**Naegeli**  
**REPORTING**  
 CORPORATION

**800.528.3335**  
[www.NaegeliReporting.com](http://www.NaegeliReporting.com)

**503.227.7123 FAX**

Portland, OR  
 503.227.1544

Seattle, WA  
 206.622.3376

Spokane, WA  
 509.838.6000

Coeur d'Alene, ID  
 208.667.1163

Court Reporting

Trial Presentation

Videoconferencing

Videography

## DRIVING CONTRACT

In exchange for the privilege of being allowed to drive or ride in a mission-owned car while serving in the Washington Spokane Mission,

I, Thomas WATTE  
(PRINT NAME HERE)

agree to:

- a. Obey all mission vehicle rules.
- b. Wear a seat belt at all times while the vehicle is moving.
- c. Submit all reports on time.
- d. *Not* tamper with odometers.
- e. Use defensive driving principles.
- f. Obey all local traffic laws.
- g. Drive mission vehicles only.
- h. *Not* transport unauthorized people in the vehicle.
- i. Only use the vehicle for approved mission business within my assigned area.

Signed: Thomas WATTE

Date: 8 JAN 2003

WASHINGTON SPOKANE MISSION

1 JANUARY 2000

EXH. NO. 3 FOR ID  
DATE: 10-17-06  
WITNESS: T. WATTE  
PATRICIA L. HUBBARD  
CSR NO 340

## Attachment D

1  
2  
3  
4  
5  
6  
7  
8  
9  
10 )  
11 )  
12 )  
13 )  
14 ) DECLARATION OF  
15 ) JAMES T. ROSS  
16 )  
17 )  
18 )  
19 )  
20 )  
21 I, James T. Ross, under the penalty of perjury of the laws of the State of Washington,  
22 hereby declare and state:  
23 That I was a missionary for the Church of Jesus Christ of Latter Day Saints from May of  
24 2002 to May of 2004 at which time I received a honorable release. I served in the Spokane,  
25 Washington mission and held the positions of Senior Companion, Trainer, District Leader, Zone  
26 Leader, and Assistant to the President.  
27 On or about August 21, 2003 I was involved in a motor vehicle collision with six other  
28 Elders including my companion, Elder Thomas Waite. At that time I was also a Zone Leader as  
29 well as Elder Waite's Senior Companion. Elder Waite and I had been companions for  
30 approximately two weeks. That morning Elder Donald Fossum and Elder Cesar Porras, the  
31 Elders to which the 2003 Dakota pickup was assigned, picked us up for either a zone or district  
32

DECLARATION OF JAMES T. ROSS - 1

NORDSTROM & NEES, P.S.  
ATTORNEYS AT LAW  
323 South Pines Road  
Spokane Valley, Washington 99206  
(509) 924-9800  
Fax (509) 924-9923

meeting. We were the last Elders to be picked up and since there were already four Elders sitting inside the cab of the pickup (two in the front seat, two in the extended cab seats), Elder Waite and I climbed into the bed of the canopied pickup. I, as well as other Elders had frequently ridden in the bed of the pickup and did so to most weekly district meetings unless another ride was available. Following the meeting we stopped off at the Subway restaurant on 32<sup>nd</sup> Avenue. After lunch Elder Fossum, Elder Porras, Elder Hansen and I got into the cab of the pickup, and Elder Ryan and Elder Waite who came out of the restaurant last, climbed into the bed.

I had been in this particular area for approximately eight weeks, living at the same apartment and was familiar with the route down Adams Road and the four-way stop at the intersection of 8<sup>th</sup> Avenue. On the day of the collision I was in the front passenger seat and Elder Fossum was driving the pickup. Elders Porras and Hansen were in the back seat. I recall specifically that Elder Fossum stopped at the stop sign on Adams Road. There is a big pine tree which blocks our view to the west on 8<sup>th</sup> and I was unable to see any car approaching from that direction until we began moving forward pass the stop sign. I am not sure exactly where the pickup was in relation to the intersection but the next thing I recall is hearing the screeching of tires. I then looked and saw a vehicle traveling at a high rate of speed coming towards us down 8th Avenue. I then pointed my finger toward the speeding car to get Elder Fossum's attention and yelled "oh crap". Elder Fossum looked and saw the car coming and responded by pushing the accelerator to the floor. The next thing I knew the car hit the side of the pickup knocking us approximately 180 degrees.

After the pickup stopped I looked in the rear and saw that the canopy and both Elder Ryan and Elder Waite were missing. I exited the pickup and found both Elder Ryan and Elder Waite lying on the pavement. Elder Waite was not only unconscious but he was not breathing. He also had blood coming from his nose and ears. Elder Waite finally began to breathe and at some point in time I recall the ambulance arriving.

I do not recall any actual conversations with anyone although I know that I did talk with the other Elders. We did kneel down and say a prayer for Elder Waite and Elder Ryan and also called President Ludlow to inform him what had happened.

DECLARATION OF JAMES T. ROSS - 2

NORDSTROM & NEES, P.S.  
ATTORNEYS AT LAW  
323 South Pines Road  
Spokane Valley, Washington 99206  
(509) 924-9800  
Fax (509) 924-9923

## Attachment E

UNITED STATES JUDICIAL DISTRICT COURT

FOR THE EASTERN DISTRICT OF WASHINGTON

\* \* \*

THOMAS A. WAITE, )  
                      )  
Plaintiff,         ) CIVIL NO. CV-05-399-EFS  
                      )  
vs.                 ) VIDEO DEPOSITION OF:  
                      )  
THE CHURCH OF JESUS CHRIST ) MARK TYLER RYAN  
OF LATTER DAY SAINTS, dba )  
CORPORATION OF THE      )  
PRESIDING BISHOP OF THE )  
CHURCH OF JESUS CHRIST OF )  
LATTER DAY SAINTS, a Utah )  
corporation, dba        )  
CORPORATION OF THE      )  
PRESIDENT OF THE CHURCH )  
OF JESUS CHRIST OF LATTER )  
DAY SAINTS, a Utah      )  
corporation; DONALD C. )  
FOSSUM; and STEVEN D. )  
BRODHEAD,             )  
                      )  
Defendants.          )

\* \* \*

November 10, 2006  
10:11 a.m.

Offices of Kirton & McConkie  
60 East South Temple, Suite 1800  
Salt Lake City, Utah

\* \* \*

RENEE L. STACY  
Registered Professional Reporter

Page 10

1 stuff, but, like, it's been four and a half years  
 2 since I was in the MTC, and right now I don't recall  
 3 at the actual Missionary Training Center, but before  
 4 we entered in our normal mission, we were trained in  
 5 safety habits.

6 Q Would this be first aid-type safety in  
 7 addition to other types of safety?

8 A I really don't remember. I really don't  
 9 remember.

10 Q That brings up a good point. In this  
 11 accident, did you suffer an injury? And I'm speaking  
 12 of the accident that occurred where the Honda hit the  
 13 vehicle that was being driven by Mr. Fossum?

14 A Was I injured? Yes.

15 Q And can you just tell us briefly what the  
 16 nature of your injuries were?

17 A Just -- I had a major concussion, bleeding.  
 18 My head was bleeding. I lost a lot of my hair. Just  
 19 scratches, like, I just have -- you know, I have  
 20 little scars on my body. I still have them. They're  
 21 -- nothing major happened. I was not major injured.  
 22 No major injuries, like no...

23 Q At some point in time during this impact or  
 24 immediately after impact, were you unconscious?

25 A Yes.

Page 11

1 Q Okay. Your answer to that was "yes"?  
 2 A Yes.

3 Q And do you know how long you might have  
 4 been unconscious?

5 A I have no clue of the time frame. I would  
 6 assume under five minutes.

7 Q When you woke up, can you tell us where you  
 8 were, if you remember?

9 A I -- I recall -- I do recall, like, being  
 10 out of breath. I can't tell you where I was at. I  
 11 was obviously on the road. I was crawling, and then  
 12 I remember passing out, and then I woke up a second  
 13 time and I was just -- I was on my -- the left side  
 14 of my face, that I remember, and my head was on the  
 15 curb, and kind of -- well, kind of in the grass, but  
 16 my body was on the curb, and I just was covered in  
 17 blood, and I remember Elder Hansen -- I can't  
 18 remember Elder -- Dillon Hansen was waving his hands  
 19 and trying to get me, you know, to wake up. Other  
 20 than that...

21 Q Okay. And I'll cover a little bit more of  
 22 that later. I'm wondering, do you think -- except  
 23 for that which you cannot remember, do you think any  
 24 of your memory has been affected by this particular  
 25 accident? In other words, your ability to remember

1 what you did in training or what you did as a  
 2 missionary prior to this accident.

3 A No.

4 Q What is the -- and just to -- so, to put  
 5 this in perspective, what is the last thing you  
 6 remember prior to the impact of the vehicles?

7 A Just the car -- the screeching tires.

8 Q Okay. So you remember that?

9 A Yeah.

10 Q All right.

11 A I even remember where Elder Waite was  
 12 sitting, as opposed to where I was sitting, in the  
 13 back of the pickup truck.

14 Q Okay. Well --

15 A How I was sitting.

16 Q Since you've mentioned that, why don't you  
 17 tell us where you remember him sitting -- Elder Waite  
 18 was sitting and where you were sitting. And this is  
 19 in the bed of the vehicle, correct?

20 A Yes. If I remember right, we were facing  
 21 north, and I was on the left side of the car, and I  
 22 was sitting against the wheel well that got hit. My  
 23 arms were like this. I just remember being spread  
 24 out. And Elder Waite was to my right, facing me, and  
 25 his arm was on the -- his arm was on the gate, his

Page 12

1 left arm was on the gate and he was leaning.

2 We were talking. I don't recall what we  
 3 were talking about.

4 Q Was the gate up?

5 A The gate was up. Everything -- the gate  
 6 was up and the window was closed.

7 Q And the canopy was on the vehicle?

8 A Until my head took it off, yes.

9 Q And do you remember -- do you -- you said  
 10 you remember sitting in the vehicle and hearing  
 11 screeching tires. Do you remember actually hitting  
 12 the canopy?

13 A You know what? I don't. All I -- to my  
 14 recollection, I only remember the screeching tires.  
 15 The next thing I know is I'm on the side of the road.

16 Q I take it from that particular answer that  
 17 you do not remember anything about the trajectory or  
 18 where Mr. Waite went.

19 A No. No. I was not -- from what I know, I  
 20 wasn't conscious when it happened.

21 Q Do you know in what manner the canopy was  
 22 attached or bolted down to the pickup?

23 A It was clamped. It had clamps on it, and  
 24 the clamps --

25 Q Had you ever been involved with that

Page 13